

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

IN THE MATTER OF: : **MEMORANDUM OPINION**
ARLET A. STOUTAMIRE, :
DELINQUENT CHILD : **CASE NO. 2004-T-0085**

Civil appeal from the Court of Common Pleas, Juvenile Division, Case No. 2003 JD 1304.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Appellee).

David H. Bodiker, Ohio Public Defender and *Molly J. Bruns*, Assistant State Public Defender, 8 East Long Street, 11th Floor, Columbus, OH 43215-2998 (For Appellant).

WILLIAM M. O'NEILL, J.

{¶1} On June 29, 2004, appellant, Arlet A. Stoutamire, filed a notice of appeal from a January 28, 2004 judgment of the Trumbull County Court of Common Pleas, Juvenile Division. Thus, appellant's notice of appeal was filed over five months after the judgment had been issued by the trial court. On September 16, 2004, appellee, State of Ohio, filed a motion to dismiss this appeal as being untimely.

{¶2} App.R. 4(A) states:

{¶3} "A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of

the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.”

{¶4} App.R. 5(A) provides, in relevant part:

{¶5} “(1) After the expiration of the thirty day period provided by App.R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

{¶6} “(a) Criminal proceedings;

{¶7} “(b) Delinquency proceedings; and

{¶8} “(c) Serious youthful offender proceedings.

{¶9} “(2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right.”

{¶10} In the present case, appellant has neither complied with the thirty-day rule set forth in App.R. 4(A) nor sought leave to appeal. Thus, this court is without jurisdiction to consider this appeal.

{¶11} We note, however, that since this is a juvenile case and a juvenile should not be held accountable for her attorney’s failure to timely file an appeal, we may be willing to consider a proper motion for delayed appeal if it is filed in accordance with App.R. 5(A).

{¶12} Based upon the foregoing analysis, appellee's motion to dismiss is hereby granted.

{¶13} Appeal dismissed.

DONALD R. FORD, P.J.,

JUDITH A. CHRISTLEY, J.,

concur.